

1 JOSEPH P. RUSSONIELLO (CASBN 44332)  
United States Attorney

2 BRIAN J. STRETCH (CSBN 163973)  
3 Chief, Criminal Division

4 WILLIAM FRENTZEN (LABN 24421)  
ROBERT DAVID REES (CSBN 229441)  
5 Assistant United States Attorneys

6 450 Golden Gate Avenue  
San Francisco, CA 94103  
7 Telephone: (415) 436-6959/7210  
Fax: (415) 436-7234  
8 E-mail: william.frentzen@usdoj.gov  
robert.rees@usdoj.gov

9 Attorneys for United States of America

10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA, ) Case No: CR 05 0324 MMC

15 Plaintiff, )

16 v. )

17 DENNIS CYRUS, JR., )

18 Defendant. )

19 )  
19 \_\_\_\_\_)  
19 **UNITED STATES' APPLICATION  
FOR AND [PROPOSED] ORDER  
RELEASING RESULTS OF  
DEFENDANT'S JUVENILE  
PROBATION DRUG TESTING  
UNDER 42 CFR §§ 2.1 & 2.2**

20 The defendant has indicated that he intends to present a defense of voluntary  
21 intoxication to the charges filed against him in the above-captioned case. The United  
22 States has learned that Cyrus was drug tested on a number of occasions as part of the  
23 terms of his juvenile probation upon his release from Log Cabin Ranch in late 2001 up  
24 through his arrest in Kansas City on September 12, 2002.

25 42 C.F.R. §§ 2.1(b)(2)(C) and 2.2(b)(2)(C) allow a Court to order the release of  
26 patient records related to drug and alcohol abuse respectively upon a showing of good  
27 cause. The United States submits that the aforementioned records are relevant to any  
28 rebuttal the United States may present to Cyrus's claim of voluntary intoxication as they

1 provide an ongoing record of the types of drugs and alcohol, if any, the defendant may  
2 have ingested at a given date during the time he is alleged to have committed the instant  
3 offenses. Accordingly, the Court should order the release of these materials under the  
4 aforementioned provisions.

5 The United States is aware that 42 C.F.R. §§ 2.1(c) and 2.2(c) both prevent the use  
6 of such records to, among other things, “substantiate any criminal charges against a  
7 patient.” However, the regulation indicates that a Court order under §§ 2.1(b)(2)(C) and  
8 2.2(b)(2)(C) overcomes such prohibition, and given that the defense has put the issue of  
9 Cyrus’s potential substance abuse at issue, and given that the government intends only to  
10 present this material in its rebuttal case or at any penalty phase hearing where the issue of  
11 voluntary intoxication is put in issue by the defense, the United States submits that such  
12 disclosure is appropriate.

13 April 21

14 DATED: February 26, 2009

Respectfully submitted,

15 JOSEPH P. RUSSONIELLO  
16 United States Attorney

17 \_\_\_\_\_/s  
18 WILLIAM FRENZEN  
19 ROBERT DAVID REES  
20 Assistant United States Attorneys

## 21 **[PROPOSED] ORDER**

22 Pursuant to its authority under 42 C.F.R. §§ 2.1(b)(2)(C) and 2.2(b)(2)(C), which  
23 provide that a Court may order the release of patient records related to drug and alcohol  
24 prognoses, and in light of the defendant’s stated intention to rely on a defense of  
25 voluntary intoxication during the time period he is charged with committing federal  
26 crimes in this case, this Court hereby ORDERS the release of the results of the  
27 defendant’s drug testing conducted while on juvenile probation upon his release from Log  
28 Cabin Ranch in late 2001 until his last out-of-custody test prior to his arrest on September

1 12, 2002 to the Assistant United States Attorneys prosecuting the above-captioned case  
2 and any other employee of the United States Department of Justice who has been assigned  
3 to work on the above-captioned case.

4

5 DATED: April 21, 2009

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

*Maxine M. Chesney*  
HON. MAXINE M. CHESNEY  
United States District Judge